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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,727	08/05/2003	Frank Neri	13639-1	8865
7590	03/19/2004		EXAMINER	
James M. Duncan Klein, DeNatale, Goldner, etc. P.O. Box 11172 Bakersfield, CA 93389-1172				WILSON, NEILL R
		ART UNIT		PAPER NUMBER
		3679		

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/635,727	NERI, FRANK
	<b>Examiner</b>	<b>Art Unit</b>
	Wilson	3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 20-28 is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) 17-19 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date 2. | 6) <input type="checkbox"/> Other: ____ .  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wollar et al.

Wollar et al disclose a threaded insert for insertion in a hole in a workpiece wherein the hole has a polygonal shape and the insert includes an upper flange 11 and a hollow body with an upper section 31 with flat sides that correspond to the shape of the hole in the workpiece. In addition, the upper section of the fastener body includes slots 52 that extend in an axial direction and facilitate expansion of the upper section of the fastener.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9-12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wollar et al.

In Wollar et al, the expanding portion of the fastener has four flat sides which fit in a corresponding opening or bore in the workpiece. It would have been an obvious matter of design choice to one having ordinary skill in the art at the time of the invention to have provided Wollar et al with six flat sides (instead of four) on the upper expanding portion of the fastener. Note that Wollar et al disclose a fastener embodiment with a different shape on the upper expanding portion of the fastener, so Wollar provides the suggestion that other or a variation of shapes can be used.

Claims 7, 8, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wollar et al in view of Francis et al.

Francis et al discloses the concept of providing a closely related expanding fastener with a sealing material 27 positioned under the bottom surface of the fastener flange or head.

A person having ordinary skill in the art at the time of the invention, after review of the teachings of Wollar et al and Francis et al, would have obviously realized that the outer flange or head of the Wollar et al fastener could have been provided with a sealing material on its bottom surface to provide a seal around the flange or head after the fastener is installed, and it would have been obvious to this person at that time to have made this modification in Wollar et al. The choice of a specific material for the sealing material is again an obvious matter of design choice that would have been based on routine experimentation with various materials.

### ***Allowable Subject Matter***

Claims 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 20-28 are allowed.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Smith et al, Schruff and the French patent disclose related fastener structures and are cited to further show the state of the art.

The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Art Unit: \*\*\*

Typed or printed name of person signing this certificate:

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### Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) \_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
(Date)

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Signature: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

A response to this action can be filed by Fax (use Fax No. 703-872-9326).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neill Wilson whose telephone number is 703-308-0164. The examiner can normally be reached on Mon.-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 308-1159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: \*\*\*

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NRW  
3/17/04



Neill Wilson  
Primary Examiner